

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF PENNSYLVANIA

IN RE: . Case Nos. 00-22876-JKF  
. 01-01139-JKF  
PITTSBURGH CORNING CORP., . 01-10578-JKF  
W.R. GRACE, FEDERAL MOGUL, . 02-20198-JKF  
NORTH AMERICAN REFRACTORIES . 02-12687-JKF  
CO., ACandS, INC., GLOBAL . 02-21626-JKF  
INDUSTRIAL TECHNOLOGIES, and . 04-11300-JKF  
THE FLINKOTE COMPANY, .  
. 5414 USX Tower Building  
Debtors. . Pittsburgh, PA 15222  
. .  
. December 11, 2007  
. . . . . 1:35 p.m.

TRANSCRIPT OF HEARING  
BEFORE HONORABLE JUDITH K. FITZGERALD  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For Pittsburgh Corning: Reed Smith, LLP  
By: DAVID ZIEGLER, ESQ.  
JAMES RESTIVO, ESQ.  
435 Sixth Avenue  
Pittsburgh, PA 15219

For the Pittsburgh Unsecured Leech Tishman Fuscaldo & Lampl  
Trade Committee: By: CRYSTAL THORNTON, ESQ.  
1800 Frick Building  
Pittsburgh, PA 15219

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(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Cont'd.):

For ACC:

Campbell & Levine  
By: DAVID SALZMAN, ESQ.  
PHILIP MILCH, ESQ.  
(telephonic appearance)  
1700 Grant Building  
310 Grant Street  
Pittsburgh, PA 15219

Caplin & Drysdale, Chartered  
By: PETER VAN N. LOCKWOOD, ESQ.  
One Thomas Circle, N.W.  
Washington, DC 20005  
(telephonic appearance)

Insurance Counsel to ACC:

Anderson Kill & Olick, P.C.  
By: ROBERT M. HORKOVICH, ESQ.  
1251 Avenue of the Americas  
New York, NY 10020  
(telephonic appearance)

For Certain PCC Cancer  
Claimants:

Montgomery, McCracken, Walker  
& Rhoads, LLP  
By: NATALIE D. RAMSEY, ESQ.  
NOEL C. BURNHAM, ESQ.  
123 South Broad Street  
Philadelphia, PA 19109  
(telephonic appearances)

For Corning, Inc.:

Thorp Reed & Armstrong, LLP  
By: KIMBERLY L. WAKIM, ESQ.  
ELENE M. MORAN, ESQ.  
One Oxford Centre  
301 Grant Street  
14th Floor  
Pittsburgh, PA 15219

Ward Norris Heller & Reidy LLP  
By: CHERYL A. HELLER, ESQ.  
THOMAS D'ANTONIO, ESQ.  
300 State Street  
Rochester, New York 14614

For PPG Industries:

Kirkpatrick & Lockhart, LLP  
By: DAVID F. MCGONIGLE, ESQ.  
DAVID MURDOCH, ESQ.  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15228

APPEARANCES (Cont'd.):

For North Star:

Skadden, Arps, Slate, Meagher  
& Flom, LLP

By: MICHAEL J. BALCH, ESQ.  
Four Times Square  
New York, NY 10036  
(telephonic appearance)

For Transport Insurance &  
Agricultural Insurance:

Lindabury, McCormick & Estabrook  
By: JAY LAVROFF, ESQ.  
53 Cardinal Drive, P.O. Box 2369  
Westfield, New Jersey 07091  
(telephonic appearance)

For Reaud, Morgan & Quinn:

Stutzman, Bromberg, Esserman,  
& Plifka, PC  
By: DAVID J. PARSONS, ESQ.  
SANDER L. ESSERMAN, ESQ.  
(telephonic appearance)  
2323 Bryan Street  
Suite 2200  
Dallas, TX 75201

For Allstate Insurance Co.:

Rivkin Radler LLP  
By: MICHAEL BUCKLEY, ESQ.  
EAB Plaza (Long Island)  
Uniondale, NY 11556  
(telephonic appearance)

For Mt. McKinley:

Litchfield Cavo  
By: DENNIS DOLAN, ESQ.  
Suite 200  
303 West Madison Street  
Chicago, IL 60606  
(telephonic appearance)

For Continental Insurance  
Company:

Carroll, Burdick & McDonough LLP  
By: GRETCHEN RAMOS, ESQ.  
44 Montgomery Street  
Suite 400  
San Francisco, CA 94104  
(telephonic appearance)

APPEARANCES (Cont'd.):

For Certain Underwriters at  
Lloyds, London and Certain  
London Market Insurers:

Duane Morris LLP  
By: JEFF D. KAHANE, ESQ.  
633 West 5th Street  
Suite 4600  
Los Angeles, CA 90071  
(telephonic appearance)

For Future Claimants:

Young Conaway Stargatt & Taylor,  
LLP  
By: EDWIN J. HARRON, ESQ.  
The Brandywine Building  
1000 West Street  
17th Floor  
P.O. Box 391  
Wilmington, DE 19899  
(telephonic appearance)

For Everest Insurance:

McClain, Maney & Patchin  
By: DAVID P. McCLAIN, ESQ.  
South Tower  
Pennzoil Place  
711 Louisiana  
Suite 3100  
Houston, TX 77002  
(telephonic appearance)

For Futures Asbestos Claims  
Representative:

Meyer, Unkovic & Scott LLP  
By: JOEL M. HELMRICH, ESQ.  
1300 Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15222

For Employers Insurance  
of WAUSAU:

Dorsey & Whitney, LLP  
By: JORDAN I. BRACKETT, ESQ.  
250 Park Avenue  
New York, NY 10177  
(telephonic appearance)

For Lumbermens Mutual  
Casualty Co. and Seaton:

Drinker Biddle & Reath LLP  
By: MICHAEL F. BROWN, ESQ.  
JEFFREY BOERGER, ESQ.  
One Logan Square  
18th & Cherry Streets  
Philadelphia, PA 19103  
(telephonic appearances)

APPEARANCES (Cont'd.):

For Evanston Insurance Co. & Associated International:	Traub Eglin Lieberman Straus By: ROBERT P. SIEGEL, ESQ. Mid-Westchester Executive Park 7 Skyline Drive Hawthorne, NY 10532 (telephonic appearance)
For Certain Underwriters of Lloyds London & London Market Insurers:	Tucker Arensberg, P.C. By: BEVERLY WEISS MANNE, ESQ. 1500 One PPG Place Pittsburgh, PA 15222
For Berkshire Hathaway:	Graham, Curtin & Sheridan By: ROBERT W. MAURIELLO, JR., ESQ. Four Headquarters Plaza P.O. Box 1991 Morristown, NJ 07962 (telephonic appearance)
For Future Representatives:	Young Conaway Stargatt & Taylor, LLP By: SHARON M. ZIEG, ESQ. The Brandywine Building 1000 West Street, 17th Floor P.O. Box 391 Wilmington, DE 19899 (telephonic appearance)
For ACE Insurers:	White and Williams LLP By: MICHAEL OLSAN, ESQ. 1800 One Liberty Place Philadelphia, PA 19103 (telephonic appearance)
For Travelers Casualty & Surety Co.	Debevoise & Plimpton, LLP By: ROBERT D. GOODMAN, ESQ. STEPHEN VACCARO, ESQ. MARSHA YEE, ESQ. 919 Third Avenue New York, NY 10022 (telephonic appearances)  LEONARD BIERINGER (telephonic appearance)
For Federal-Mogul Global, Inc. & The Flinkote Co.:	Sidley Austin By: KEVIN LANTRY, ESQ. 555 West Fifth Street Los Angeles, CA 90013 (telephonic appearance)

APPEARANCES (Cont'd.):

For Pittsburgh Corning:

Pittsburgh Corning  
By: JOSEPH NESE  
(telephonic appearance)

For Federal-Mogul Global,  
Inc., W.R. Grace & Co.,  
& The Flinkote Company:

Pachulski, Stang, Ziehl, Young,  
Jones & Weintraub, P.C.  
By: JAMES E. O'NEILL, ESQ.  
919 North Market Street  
17th Floor  
P.O. Box 8705  
Wilmington, DE 19899  
(telephonic appearance)

For Asbestos Claimants:

Hartley & O'Brien  
By: J. MICHAEL PRASCIK, ESQ.  
The Wagener Building  
2001 Main Street, Suite 600  
Wheeling, WV 26003-2855  
(telephonic appearance)

For Royal Alliance et al.:

Wilson Elser Moskowitz Edelman  
& Dicker LLP  
By: CARL J. PERNICONE, ESQ.  
150 East 42nd Street  
New York, NY 10017  
(telephonic appearance)

For W.R. Grace & Co., Inc.:

W.R. Grace & Co., Inc.  
By: WILLIAM SPARKS  
(telephonic appearance)

For Official Committee of  
Unsecured Creditors:

Duane Morris LLP  
By: MICHAEL R. LASTOWSKI, ESQ.  
1100 North Market Street  
Suite 1200  
Wilmington, DE 19801  
(telephonic appearance)

For W.R. Grace & Co.:

Kirkland & Ellis, LLP  
By: JANET S. BAER, ESQ.  
Aon Center  
200 East Randolph Drive  
Chicago, IL 60601  
(telephonic appearance)

APPEARANCES (Cont'd.):

For Official Committee of  
Asbestos Personal Injury  
Claimants:

Campbell & Levine, LLC  
By: MARK T. HURFORD, ESQ.  
800 N. King Street  
Suite 300  
Wilmington, DE 19801  
(telephonic appearance)

Caplin & Drysdale, Chartered  
By: JAMES WEHNER, ESQ.  
One Thomas Circle, N.W.  
Washington, DC 20005  
(telephonic appearance)

For Official Committee of  
Unsecured Creditors:

Stroock & Stroock & Lavan, LLP  
By: ARLENE G. KRIEGER, ESQ.  
180 Maiden Lane  
New York, NY 10038  
(telephonic appearance)

For David T. Austern, The  
Future Claimants Rep:

Phillips, Goldman & Spence, P.A.  
By: JOHN C. PHILLIPS, JR., ESQ.  
1200 North Broom Street  
Wilmington, DE 19806  
(telephonic appearance)

For Cooper Industries:

Orrick, Herrington & Sutcliffe,  
LLP  
By: KATHERINE S. THOMAS, ESQ.  
Washington Harbour  
3050 K Street, N.W.  
Washington, DC 20007  
(telephonic appearance)

For Murray Capital Mgt.:

Murray Capital Management  
By: MARTI MURRAY  
(telephonic appearance)

For Official Committee of  
Asbestos Property Damage  
Claimants:

Ferry, Joseph & Pearce, P.A.  
By: Theodore J. TACCONELLI, ESQ.  
824 Market Street  
Suite 904  
P.O. Box 1351  
Wilmington, DE 19899  
(telephonic appearance)

APPEARANCES (Cont'd.):

For the U.S. Trustee:	Office of the U.S. Trustee By: RICHARD L. SCHEPACARTER, ESQ. J. Caleb Boggs Federal Building 844 King Street Suite 2313 Lockbox 35 Wilmington, DE 19801 (telephonic appearance)
For Official Committee of Unsecured Creditors:	The Bayard Firm By: CHARLENE D. DAVIS, ESQ. 222 Delaware Avenue Suite 900 P.O. Box 25130 Wilmington, DE 19899 (telephonic appearance)
For U.S. Trustee Department:	Office of the U.S. Trustee By: DAVID M. KLAUDER, ESQ. 601 Walnut Street Room 950W Philadelphia, PA 19106 (telephonic appearance)
For Dow Jones News Wires:	Dow Jones News Wires By: PEG BRICKLEY (telephonic appearance)
For Employers Insurance Co. of Wausau:	Hamilton, Altman, Canale & Dillon By: AMY SPECKTOR, ESQ. 4600 East West Highway, Suite 201 Bethesda, MD 20814 (telephonic appearance)
For AcandS, Inc.:	Pachulski, Stang, Ziehl, Young, Jones & Weintraub, P.C. By: CURTIS A. HEHN, ESQ. LAURA DAVIS JONES, ESQ. 919 North Market Street 17th Floor P.O. Box 8705 Wilmington, DE 19899 (telephonic appearances)



APPEARANCES (Cont'd.):

For Imperial Tobacco Canada  
Limited:

Kirkland & Ellis, LLP  
By: DAVID M. BERNICK, ESQ.  
ADAM PAUL, ESQ.

Aon Center  
200 East Randolph Drive  
Chicago, IL 60601  
(telephonic appearances)

Kirkland & Ellis, LLP  
By: THEODORE L. FREEDMAN, ESQ.  
Citigroup Center  
153 East 53rd Street  
New York, NY 10022  
(telephonic appearance)

King & Spalding  
By: MARK MALONEY, ESQ.  
JAMES A. PARDO, JR., ESQ.  
FELTON E. PARRISH, ESQ.  
1180 Peachtree Street  
Atlanta, GA 30309  
(telephonic appearances)

Morris, James, Hitchens &  
Williams, LLP  
By: STEPHEN M. MILLER, ESQ.  
PNC Bank Center  
222 Delaware Avenue  
10th Floor  
P.O. Box 2306  
Wilmington, DE 19899  
(telephonic appearance)

1 THE COURT: The matter of Pittsburgh Corning  
2 Corporation, 00-22876. The participants I have listed by phone  
3 Robert Mauriello, Gretchen Ramos, Sharon Zeig, Robert  
4 Horkovich, David Salzman, Jay Lavroff, Edwin Harron, Phillip  
5 Milch, Peter Lockwood, Michael Balch, Michael Buckley, Jeffrey  
6 Boerger, Jordan Brackett, Noel Burnham, Sander Esserman, Cheryl  
7 Heller, Michael Olsan, Robert Goodman, Robert Siegel, Kevin  
8 Lantry, Joseph Nese, James O'Neill, Michael Brown, Leonard  
9 Bieringer, David McClain, Natalie Ramsey, Michael Prascik,  
10 David Parsons, Stephen Vaccaro, Dennis Dolan, Carl Pernicone,  
11 William Sparks, James O'Neill, Michael Lastowski, Janet Baer,  
12 David Parsons, Mark Hurford -- I know I'm repeating names  
13 because of the various cases that are being heard together with  
14 Pittsburgh Corning today. I apologize. I should've read the  
15 cases.

16 I'm into W.R. Grace now. David Parsons, Mark  
17 Hurford, Peter Lockwood, James Wehner, Arlene Krieger, Sander  
18 Esserman, John C. Phillips, Michael Brown, Marty Murray,  
19 Katherine Thomas.

20 Now into Federal Mogul. Theodore Tacconelli, Richard  
21 Schepacarter, James O'Neill, Charlene Davis, David Klauder,  
22 Kevin Lantry, Peg Brickley, Amy Specktor, Jeffrey Kahane,  
23 Katherine Thomas.

24 AcandS. Marsha Yee, Curtis Hehn, Laura Davis Jones.

25 North American Refractories. Phillip Milch, Peter

1 Lockwood, David Salzman.

2 Global Industrial Technologies. Phillip Milch, Peter  
3 Lockwood, David Salzman.

4 The Flinkote Company. James O'Neill, David Bernick,  
5 Theodore Freedman, Mark Maloney, Adam Paul, James Pardo, Felton  
6 Parrish, Stephen Miller, and Kevin Lantry.

7 And I'll take entries in court.

8 MR. RESTIVO: James Restivo and David Ziegler for the  
9 debtor.

10 MR. HELMRICH: Good afternoon, Your Honor. Joel  
11 Helmrich for Lawrence Fitzpatrick.

12 MR. SALZMAN: Good afternoon, Your Honor. David  
13 Salzman for the ACC.

14 MS. WAKIM: Good afternoon, Your Honor. Kimberly  
15 Wakim, Elane Maran, Cheryl Heller, and Thomas D'Antonio for  
16 Corning, Incorporated.

17 MR. MCGONIGLE: Good afternoon, Your Honor. David  
18 McGonigle and David Murdoch for PPG Industries.

19 MS. THORNTON-ILLAR: Good afternoon, Your Honor.  
20 Crystal Thornton-Illar on behalf of Pittsburgh Corning  
21 Unsecured Trade Committee.

22 MR. PARSONS: Good afternoon, Your Honor. David  
23 Parsons actually in the courtroom not on the telephone for  
24 Reaud Morgan.

25 MS. MANNE: Good afternoon, Your Honor. Beverly

1 Weiss Manne for Certain Underwriters at Lloyds London and  
2 Certain London Market Insurers.

3 THE COURT: Mr. Restivo.

4 MR. RESTIVO: Good afternoon, Your Honor. We have an  
5 agenda for today's omnibus hearing. I believe there's only two  
6 active matters on it. I was told in the hallway by the  
7 bankruptcy practitioners that the case you just finished was  
8 kind of messy, so I will start by saying happy holidays, Your  
9 Honor.

10 THE COURT: Thank you. Same to you.

11 MR. RESTIVO: We're going to start with Number 6,  
12 Your Honor, because there's a lot of people on the phone who  
13 probably have interest only in Number 6 and not in anything  
14 else. Number 6 is a motion relating to Tercini (phonetic)  
15 Consulting, and I understand that the debtor's status report is  
16 going to be given by Janet Baer, who I believe is on the  
17 telephone line.

18 THE COURT: All right. Thank you. Ms. Baer.

19 MS. BAER: Good afternoon, Your Honor. Janet Baer on  
20 behalf of W.R. Grace. Your Honor, just to remind you of sort  
21 of where we are, several months ago probably a little bit  
22 hesitantly you entered an order appointing an examiner in the  
23 W.R. Grace case and I believe a couple of the other Delaware  
24 cases to investigate the Tercini situation. The debtors were  
25 all very concerned that good money would be spent going after

1 bad and wanted to make sure that the Examiner was given strict  
2 guidelines on what to do, and there were discussions about how  
3 it would be paid for.

4           Your Honor very wisely ordered that the U.S. Trustee  
5 and the various debtors have a series of telephone conferences  
6 to discuss how we would do this, the mechanics and the like and  
7 set today as a report back on where we are with the thought I  
8 think that at this point we would know what the Examiner was  
9 going to do and who the Examiner would be. Since that time  
10 there have been some significant changes. The most significant  
11 of which is that the Tercini estate filed a Chapter 11 case in  
12 Connecticut a couple of weeks ago. That we believe changed the  
13 scenario quite a bit, and the first thing that came up in our  
14 weekly call with the U.S. Trustee is what impact will this have  
15 on the Examiner that Your Honor ordered in our case and others,  
16 and what things have changed as a result?

17           The U.S. Trustee's initial concern I think was the  
18 automatic stay and whether or not the automatic stay would  
19 block the Examiner that you had ordered from going forward.  
20 From the debtor's perspective, our concerns were not just the  
21 automatic stay, which we agreed was an issue, but whether or  
22 not it made sense to go forward with an examiner in these cases  
23 versus getting the Tercini estate involved and having an  
24 examiner or perhaps the Chapter 11 Trustee appointed in the  
25 Tercini case who could, in fact, run this investigation, do it

1 on behalf of the estate at the estate's expense, and  
2 investigate what happened in all of the various cases, not only  
3 the Delaware cases but the Pittsburgh cases and the New Jersey  
4 cases.

5           We discussed this with the U.S. Trustee. The U.S.  
6 Trustee took our thoughts under advisement. Subsequently, we  
7 discussed it further, and at that point the debtors had had  
8 separate discussions among themselves and decided that they  
9 thought that they best way, the most efficient way, and the  
10 most cost effective way to proceed would, in fact, be to move  
11 for the appointment of a Chapter 11 Trustee or perhaps an  
12 examiner in the Tercini estate in Connecticut.

13           The U.S. Trustee took our recommendation under  
14 advisement and then advised us about a week ago that it was not  
15 going to follow that course of action. That instead the U.S.  
16 Trustee was going to, number one, file a motion to convert the  
17 Tercini case to a Chapter 7 case. And this, by the way, Your  
18 Honor, is the Delaware U.S. Trustee in conjunction with and  
19 jointly with the Connecticut U.S. Trustee's Office. And,  
20 secondly, that they were going to move them to lift the stay in  
21 the Tercini estate, so that the Examiner Your Honor appointed  
22 here and in the other debtor cases could still go forward and  
23 do the investigation.

24           Again, the debtors jointly here suggested to the U.S.  
25 Trustee we did not think that was a wise course of action. It

1 didn't make any sense to us for a number of reasons. Number  
2 one, we were very concerned that if a case is converted to a  
3 Chapter 7, none of us debtors will have any say in who the  
4 Chapter 7 Trustee might be who would presumably be the one to  
5 perhaps do some of this investigating. As Your Honor I'm sure  
6 is aware, Chapter 7 trustees generally speaking are not large  
7 firms. They're not -- they're often times sole practitioners.  
8 They're not individuals who have the resources or the time  
9 frankly to do the kind of investigation that may be appropriate  
10 here.

11           Secondly, because all of these joint debtors are sort  
12 of on both sides of the equation, being owed, we believe, money  
13 by the Tercini estate but also potentially owing the Tercini  
14 estate, and these are the sorts of things that have to go into  
15 the investigation. We probably would not have any input into  
16 who the Trustee would be in the Chapter 7 converted case, and  
17 that caused us great concern.

18           Thirdly, Your Honor, we didn't think it made any  
19 sense at this point to lift the automatic stay, so that the  
20 Examiner in our case, the Grace case, and the other cases would  
21 still go forward at the debtors' expenses here when we have the  
22 Tercini estate, which is the logical place for a trustee or  
23 examiner to go forward with the investigation. The Tercini  
24 estate does have significant funds in the bank, and it seems  
25 appropriate that the Tercini estate would, in fact, be the one

1 to fund this investigation.

2 In addition, Your Honor, it dealt with some of the  
3 jurisdictional issues that I think were actually raised in one  
4 of the Pittsburgh cases with respect to appointing an examiner,  
5 and those are the 1104 issues with respect to whether an  
6 examiner can be appointed at the debtors' expense when the  
7 investigation is of a third party, namely, the Tercini estate.

8 Under all of these circumstances, Your Honor, we did  
9 not believe that the route that the U.S. Trustee chose here,  
10 the Chapter 7 conversion and then the lifting of the stay, was  
11 the appropriate route to get done what needed to be done. And,  
12 Your Honor, what we would ask for and we would suggest is that  
13 Your Honor effectively defer anything moving forward here with  
14 respect to the Examiner in these cases to give us the  
15 opportunity to address the Court in Connecticut as to whether  
16 or not a Chapter 11 Trustee should be appointed in the Tercini  
17 case there or alternatively a Chapter 11 Examiner to conduct  
18 the investigation in that estate rather than moving forward  
19 with respect to the order Your Honor's entered and appointing  
20 an examiner in these cases.

21 The U.S. Trustee indicated to us in our last call  
22 that they would take our request under advisement, would look  
23 forward to the papers that we would file in Connecticut, and  
24 then decide what position they would take with respect to what  
25 we are trying to do. But that is --



1 THE COURT: All right.

2 MS. BAER: That is currently where we stand, Your  
3 Honor, and there's only one other thing I wanted to bring to  
4 your attention. And that is that in the course of the Tercini  
5 situation and the investigation, the Tercini estate itself paid  
6 a significant amount of money to the Heller Ehrman firm to do  
7 an investigation itself. We have not received a copy of that  
8 report. None of the debtors have been able to get access to  
9 it. We understand that there were confidentiality issues in  
10 New Jersey that had to be resolved. We understand that the New  
11 Jersey resolved that the document is not confidential. It's  
12 not privileged, but the U.S. Trustee has not shared it with any  
13 of the debtors here. And one of the other things that we would  
14 seek Your Honor's help and guidance on would be access to that  
15 report from the U.S. Trustee here in these cases who does, in  
16 fact, have the report and should be able to be ordered to turn  
17 it over to these debtors to aid in the investigation that's  
18 going to be done on our behalf.

19 THE COURT: All right. U.S. Trustee.

20 MR. KLAUDER: David Klauder for the United States  
21 Trustee. Let me just give you some background here. We filed  
22 in the Tercini bankruptcy, which was filed on November 14th --  
23 we filed two motions, as Ms. Baer indicated. Those were filed  
24 on December 3rd. They were a motion to convert the case to a  
25 Chapter 7 and a motion for relief from stay as it related to

1 the Examiner proceedings and the asbestos cases. Those motions  
2 were filed with expedited relief requests. And just so Your  
3 Honor knows, hearing dates have not been set on those, and  
4 we're attempting -- we just filed another request to have those  
5 motions put on for hearing, and we're attempting to get that  
6 done as quickly as possible and get those motions on and be  
7 heard as quickly as possible.

8           Also, yesterday a 341 meeting was conducted in the  
9 case, and we think some information came out from that meeting  
10 that will support our motion to convert. I believe that  
11 meeting was continued. There was some testimony, but it was  
12 continued until January. So that's the procedural aspect of  
13 this as far as the Tercini bankruptcy case goes.

14           I want to stress that we are the only party that had  
15 filed any papers in that Tercini bankruptcy case, and we moved  
16 fairly quickly to take some enforcement action. The conversion  
17 motion is very detailed, and it goes beyond just the issues of  
18 an examiner and these various asbestos cases. It has various  
19 allegations of the way they -- the company has operated and why  
20 we believe it's appropriate that it should be a liquidation at  
21 the Chapter 7.

22           It should be noted, Your Honor, that this is not a  
23 reorganization case, and I don't think anyone would disagree  
24 with that including the debtor up there in Connecticut. There  
25 is no business to reorganize, and, in fact, the debtors have

1 filed a Chapter 11 plan, which they've called a Chapter 11 plan  
2 of reorganization, but it's really a liquidating plan. There's  
3 a disclosure statement to be heard in early January, so there  
4 is that issue as well.

5           As far as the relief from stay issue, it -- we had  
6 determined that it was the -- it was a prudent course of action  
7 to ask for relief from stay. Your Honor has orders directing  
8 us to appoint examiners. We were in a position where we had to  
9 continue to follow those orders and do something to go with  
10 Your Honor's direction there, and through some research that we  
11 did we determined that the best course of action was to seek an  
12 immediate order for relief from stay relating to that issue up  
13 in the Connecticut case.

14           The parties have expressed to us, and I agree with  
15 Ms. Baer, that they have expressed to us their position that  
16 the Examiner proceeding should not go forward down in the  
17 Delaware, Pittsburgh, and New Jersey cases, and we understand  
18 that, but nothing's been filed in front of Your Honor to vacate  
19 that order directing us to appoint an examiner. So we're still  
20 trying to abide by that order, and that's why we're going down  
21 that road.

22           Finally, Your Honor, with regard to the Heller Ehrman  
23 report, I think there's some confusion here, and I want to make  
24 sure that our position is clear. The Heller Ehrman report --  
25 the Tercini firm, prior to bankruptcy, turned that over to us

1 under a confidentiality and settlement discussion issue, and  
2 when parties attempted to get that from the Tercini firm, they  
3 indicated that they would not because of privilege and  
4 confidentiality issues. That issue was litigated in the G-1  
5 case in front of Judge Gambardella, and Judge Gambardella  
6 issued an oral decision that said that the report should be  
7 turned over subject to the Tercini firm, the debtors up there,  
8 and I believe the Asbestos Creditors Committee, because they  
9 have privilege issues as well working out the language of an  
10 order that would make everyone happy, and there were no longer  
11 any privilege and confidentiality issues.

12           There has not been a written order that Judge  
13 Gambardella has entered into. We will abide by that order once  
14 it is entered into and all the parties have resolved their  
15 differences. We have -- we're not trying to keep this from  
16 people. We're here just being very cautious here, because of  
17 positions that parties have taken with regard to the turnover  
18 of that report. So I want to make sure that that issue is  
19 clear as well.

20           THE COURT: All right. Well, frankly, I'm not sure  
21 what I can do with respect to the appointment of the Examiner.  
22 I've got an order out there. Nobody's asked me to vacate it,  
23 so I mean at this point in time I guess it's out there. It  
24 seems to me that having that issue go forward in Connecticut is  
25 the right place to have it go forward. There is now a case

1 that's pending before a very competent bankruptcy judge who's  
2 been around the block I think as long as I have. I think we  
3 were in baby judge school together or close to it, and as a  
4 result, I think he quite well understands the need for an  
5 examiner in cases as well as any bankruptcy judge. So if he  
6 thinks that an examiner needs to be appointed in the Tercini  
7 case or a trustee does, I think he very well could understand  
8 why this might be a significant issue to all of the debtors in  
9 all of these asbestos cases where they may be some need for a  
10 report to be prepared.

11           So I'm a little bit sympathetic to the fact that if  
12 there's -- and as I understand it -- and this is from reading  
13 news reports, so I don't know how verifiable that is. But, as  
14 I understand it, the plan that was filed says that it's going  
15 to a 100 percent plan for unsecured creditors, and all the  
16 creditors in the case, as I understand it, are unsecured. So  
17 you need a report somewhere in that case that's going to  
18 explain what the liabilities of the estate are. And, clearly,  
19 at this point in time these claims have to be adjudicated  
20 somewhere.

21           So why isn't this an action that's appropriate to be  
22 heard in the Connecticut process somewhere where -- you know, I  
23 don't know how the estates are going to file their various  
24 claims when they don't have any way of knowing what Tercini did  
25 by way of over billing. You know, somebody has to take a look

1 at that. That's the reason I think that the Delaware, New  
2 York, and Pennsylvania and New Jersey courts all were willing  
3 to appoint an examiner. But one thing that's clear, if it's  
4 done in the Tercini case, you don't have to worry about having  
5 more than one, because there won't be an issue about the  
6 conflicts we're facing in these other cases. So why shouldn't  
7 it be done there?

8 MR. KLAUDER: Your Honor, David Klauder again. I'm  
9 not sure if that question is directed at me, and I just want to  
10 say that very well may be the case and maybe today is somewhat  
11 premature, because there are no papers filed by any of the  
12 debtors in that Connecticut case asking for either a Chapter 11  
13 Trustee or Examiner or the like. The only papers filed are  
14 ours dealing with the conversion and the relief from stay. So  
15 it's somewhat premature really to comment and take a position  
16 on that until that issue becomes ripe in front of the  
17 Connecticut judge.

18 THE COURT: Well, I agree with that. I mean if there  
19 are no papers filed, it's certainly never going to come up  
20 before him, and my order stands. You know, an examiner needs  
21 to be appointed somewhere, so if you're not going to take the  
22 issue up anywhere else, I still think we need an examiner. So  
23 my order stands. And I agree with you, Mr. Klauder, you need -  
24 - I think you need to have relief from stay to make sure that  
25 an examiner -- I'm not sure that you need relief from stay to

1 appoint an examiner, but I think the examiner needs relief from  
2 stay before he can do anything that's going to be adverse to  
3 the estate.

4 And just to be clear, that -- you know, to make sure  
5 you're not in violation, you probably want to get it done early  
6 on. So at some point you need to approach the Connecticut  
7 court no matter what, and if this is the appropriate time,  
8 that's fine, but I'm really not sure why the whole shooting  
9 match doesn't belong up there, quite frankly.

10 MS. BAER: Your Honor, Janet Baer on behalf of W.R.  
11 Grace. Again, it is our intention, Your Honor, very shortly,  
12 to, in fact, file papers in the Connecticut court asking for  
13 the appointment of a Chapter 11 Trustee in that case rather  
14 than the conversion to the Chapter 7 and the lift stay at this  
15 time. We think that's the way to solve the problem. Today is  
16 the status before Your Honor, and we simply wanted you to know  
17 that that is what we intend to do.

18 We have hired counsel to do so, and we would like to  
19 and want to explain why we don't want to move forward and  
20 haven't worked with the Trustee to outline the duties and who  
21 would be an examiner in the Delaware cases, for example,  
22 because we think that the right answer is that this should be a  
23 trustee appointed in Connecticut to take charge of the entire  
24 matter.

25 THE COURT: Well, I think the appropriate resolution  
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1 for today is for me to keep you on the status report schedule  
2 that I gave you before, because if you do file motions in the  
3 Connecticut case, and the Court there takes jurisdiction over  
4 that issue, or a trustee is appointed, whatever the resolution  
5 is there, so that the issue is properly before that court, then  
6 I don't think you're going to need two examiners in different  
7 cases or a trustee and an examiner. Probably one's going to do  
8 it. But I think all of you can advise me what you think about  
9 that issue once you know what the resolution is in Connecticut.  
10 I just don't see any need to pursue this issue until you've got  
11 everything in I guess one place there to know what the  
12 resolution is before the judge in Connecticut.

13           So why don't you go there, litigate whatever you're  
14 going to litigate, and then come back and tell me what the  
15 answer is? If you think you still need my assistance for some  
16 reason, or this order is still in effect that appoints the  
17 Examiner -- and I'm not going to vacate it until I know that  
18 either a Chapter 11 Trustee or an Examiner or something has  
19 been done in Connecticut to make sure that these issues get  
20 looked at, because I am of the firm belief that these issues do  
21 have to be looked at. So I'm going to keep this order in place  
22 until I'm sure that there's some appropriate resolution, and I  
23 think that may be the way to go. You can put this back on the  
24 reporting agenda and let me know what the outcome is, and if  
25 Judge Schiff takes the case over there, then maybe you don't



1 need this order any longer, and it can be vacated. And if you  
2 do still need this relief, we can discuss it then.

3 MS. BAER: Your Honor, that makes perfect sense to  
4 us.

5 MR. KLAUDER: Your Honor, David Klauder. That's fine  
6 with us, and we can do it again on the Pittsburgh omnibus dates  
7 for January I guess. That would be fine with me.

8 THE COURT: Does anybody object to that?

9 (No verbal response)

10 THE COURT: Okay. It's --

11 MR. LANTRY: Your Honor, this is Kevin Lantry on  
12 behalf of the Federal Mogul and Flinkote debtors. We don't  
13 object at all. Jan Baer has articulated our joint position.  
14 All I would want to reemphasize was in speaking with our  
15 counsel in Connecticut, they had just flagged the issue that  
16 Judge Schiff up there might be hesitant if he was in any way  
17 conflicting with your order about the examiners. It might be  
18 deferential to what you had done, and I think you have now made  
19 it clear enough, so that if he decides that his jurisdiction is  
20 the right place to do this, he doesn't need to feel like he's  
21 at odds with what you have ordered, and I think you have  
22 provided that to us.

23 THE COURT: I would never try to be at odds with  
24 Judge Schiff, so I hope he will take that and do whatever he  
25 thinks is appropriate in his cases. That's certainly within

1 his jurisdictional power, and I really do think this is an  
2 issue that belongs in his court first. So why don't you go  
3 there and see what happens and let me know? And if you still  
4 think that there's a live issue for me to adjudicate, tell me,  
5 and, otherwise, this order can be done away with at the  
6 appropriate time. But I'm not going to do anything with it  
7 until you come back to me and tell me that you don't need this  
8 relief any longer.

9 MR. LANTRY: Thank you, Your Honor.

10 THE COURT: Mr. Salzman.

11 MR. SALZMAN: Your Honor, if I may, we have no  
12 objection to the protocol that's been described, but on behalf  
13 of the ACCs in the various cases where the Caplan and Drysdale  
14 and my firm are involved, just to address I don't believe the  
15 Court is going to take up the issue of the Heller Ehrman report  
16 today either, but I just want to preserve for the record that  
17 we reserve the right to seek to do a privilege review of those  
18 documents before they are released to any other parties. We  
19 have never seen the report, and we don't know what it contains.

20 THE COURT: Well, I understand that's the case, but  
21 again, it -- I don't know whether that's going to be before me  
22 or not, Mr. Salzman. Your comments are noted.

23 MR. SALZMAN: Thank you, Your Honor.

24 THE COURT: All right. Anything else with respect to  
25 this?

1 MR. ZIEGLER: Your Honor, my -- I would ask that  
2 perhaps you could -- you don't want to vacate the order that  
3 you've already entered in these cases directing the appointment  
4 of an examiner, but perhaps you could stay that until at least  
5 we have another status conference, so that the U.S. Trustee  
6 doesn't feel like they have to proceed with appointing an  
7 examiner in the interim here.

8 THE COURT: Oh, I thought I did. Yes, to the extent  
9 that it's not clear, I am staying that order, and I'm putting  
10 it back on the January omnibus only for a status report, so you  
11 can let me know what, if anything, has happened in the  
12 Connecticut case --

13 MR. ZIEGLER: That's fine, Your Honor.

14 THE COURT: -- and -- okay, and then we'll take it up  
15 again in January.

16 MR. ZIEGLER: For everyone's information, the January  
17 omnibus is January 10th at 9:00.

18 MR. KLAUDER: Your Honor, David Klauder again. I  
19 just want to be clear on this. We are -- we do have our relief  
20 from stay motion, and we are intending on proceeding with that,  
21 and I don't want to cause any misapprehension there.

22 THE COURT: No, Mr. Klauder, I didn't intend to stay  
23 your relief from stay. What I meant was I directed the U.S.  
24 Trustee's Office to appoint an examiner. I am staying my order  
25 directing that you actually pick an examiner until after you

1 get through your relief from stay motion and the other parties  
2 have an opportunity to do whatever they're going to do in front  
3 of Judge Schiff with respect to a motion to appoint a Chapter  
4 11 Trustee, or if you're pursuing your motion to convert, or --

5 MR. KLAUDER: Okay.

6 THE COURT: -- somebody's going to file a motion for  
7 an examiner. All I want is regular status reports pending  
8 further order from this Court.

9 MR. KLAUDER: Very well.

10 THE COURT: Okay. Anybody unclear?

11 (No verbal response)

12 THE COURT: Okay.

13 MR. ZIEGLER: Your Honor, just for more clarity. You  
14 had directed us before to have weekly conferences -- conference  
15 calls with the U.S. Trustee. Are we to continue those?

16 THE COURT: Well, I don't know. They may not be such  
17 a bad idea, so that you know what's going on in the Connecticut  
18 case. What do you think?

19 MR. ZIEGLER: That's fine, Your Honor.

20 MR. KLAUDER: Your Honor, I don't mind -- David  
21 Klauder again. I don't mind having those. The last one or two  
22 has become kind of a -- just a quick -- there hasn't been much  
23 discussion on those, and there might actually be another issue  
24 with that, and I'm not sure if we want to get into that right  
25 now. But the -- again, the last one or two just became us

1 indicating what was going on in the Connecticut case, which I  
2 think anyone can check the docket and find that out. I mean  
3 I'm not sure what the utility of those at this point is until  
4 substantive things are done up in Connecticut where the Court  
5 has some hearings and issues some rulings and so forth.

6 THE COURT: Well, it's up to you. I'm staying the  
7 effect of this order. Why don't I do this? Why don't I order  
8 you to have a status report the week before the January 10th  
9 hearing, so that if there is some dispute, you folks can raise  
10 it with each other and at least get a clear picture of what's  
11 going to happen before me? So whatever the date would've been  
12 for the status conference, the week of January -- the week of  
13 -- wait until I find my calendar here. Well, it's actually the  
14 week of December 30th. Have your report -- have your meeting  
15 the week of December 30th, preparatory to the January 10th  
16 status conference.

17 MR. KLAUDER: Okay. Okay. And I take it we can  
18 coordinate that amongst ourselves?

19 THE COURT: Yes, sir.

20 MR. KLAUDER: Okay. That's fine. I'll go ahead and  
21 get everyone's e-mail and get together an appropriate date and  
22 time and so forth for that.

23 THE COURT: All right. Thank you. Okay. Anything  
24 else on this one?

25 (No verbal response)

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1 THE COURT: All right. Thank you. Anyone who is not  
2 interested in the rest of the Pittsburgh Corning agenda is free  
3 to leave, disconnect, whatever. Thank you.

4 MR. RESTIVO: Your Honor, last item --

5 THE COURT: Maybe you'll want to wait just a second,  
6 Mr. Restivo.

7 MR. RESTIVO: The last item for today is Item Number  
8 5, and I'll introduce that by referring the Court to adjourned  
9 Items 3 and 4. Item 3 is a motion of the tort victims  
10 represented by Provost Umphrey to modify or dissolve the  
11 injunction restraining litigation against PPG. That motion is  
12 continued and will be addressed at the January 10 omnibus.

13 Item Number 4 is a motion of the tort victims  
14 represented by Reaud Morgan to modify or dissolve the  
15 injunction against PPG for Pyrocal claims. That motion is also  
16 going to be addressed at the January 10 omnibus hearing.

17 That brings us to Item Number 5, which is a motion of  
18 tort victims represented by Reaud, Morgan, and Quinn to  
19 dissolve the injunction as it is -- as it affects Corning. The  
20 debtor's position is in the papers we filed, Your Honor,  
21 supporting the objection of Corning to that motion, but it does  
22 appear to the debtor that, because the effect of the injunction  
23 as to Reaud Morgan and as to Provost Umphrey claimants, at  
24 least as it relates to PPG, is going to be argued on January  
25 10. It makes sense to the debtor that we not bifurcate this

1 and deal with the effect of the injunction together. So the  
2 debtor's suggestion is that this should be moved also to  
3 January 10, so that the whole argument can be dealt with at one  
4 time.

5 It is also my personal sense, Your Honor, that if any  
6 discussions are going on -- and I have no direct knowledge  
7 whether they are or they aren't going on -- to bifurcate this  
8 issue would be counterproductive, and, therefore, the debtor's  
9 suggestion is this ought to be addressed, all three motions  
10 together, on January 10th.

11 THE COURT: All right. Thank you.

12 MR. PARSONS: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. PARSONS: Sandy Esserman sends his apologies.  
15 He'd love to be here but had a prior engagement which gives me  
16 the great pleasure of coming to Pittsburgh for the first time.

17 THE COURT: Well, you can tell him that apparently  
18 he's not the only one who brings nice weather with him, Mr.  
19 Parsons.

20 MR. PARSONS: I do try my best to live up to his  
21 example.

22 THE COURT: Thank you.

23 MR. PARSONS: The reason that we took the Reaud  
24 Morgan, PPG, and the Provost Umphrey motion off the agenda  
25 happily was they haven't been kicking around for quite so long,

1 but the Reaud Morgan motion against Corning was filed a year  
2 ago, and we had arguments on this last January that didn't  
3 really result in any conclusions. Your order denying  
4 confirmation had just come out. The parties are still  
5 digesting that, and it's been nothing for such a long time, and  
6 there have been no meaningful discussions going on approaching  
7 a consensual resolution, and we're sitting here looking at  
8 claimants who have been stayed from prosecuting personal injury  
9 claims against a non-debtor for non-derivative liability.  
10 That's the liability of that non-debtor that isn't connected  
11 with Pittsburgh Corning itself. And another year has gone by,  
12 and we really would like to press for a ruling as soon as  
13 possible on that.

14           It's our position that these claims are going to end  
15 up back in the tort system anyway. At the end of the day Your  
16 Honor's already ruled that these can't be channeled to the  
17 trust -- the core liability of Corning, and we don't see the  
18 mileage in allowing this to persist any longer. But this has  
19 been ripe for resolution. We've been happy to continue this  
20 month to month in the hope of grabbing some attempts to resolve  
21 consensually, but nothing has been forthcoming. And that in  
22 the event that we do decide to continue this further, we would  
23 really urge that Your Honor direct the parties to meet and talk  
24 and have some meaningful negotiations, because this has just  
25 been persisting with very little going on towards approaching a



1 resolution.

2           Your Honor's been fully briefed on the matter. I'm  
3 not proposing to rake it over the coals. It's been argued  
4 before you before. We would just urge that the time is right  
5 for a resolution of this. And if Your Honor's inclined to pass  
6 this to the next hearing to deal with with the others, if you  
7 could please order that the parties get together and try and  
8 resolve this and report back at the next hearing, because this  
9 has been around for a year, and I don't want to press that  
10 issue too long, but that's another year on top of the six  
11 already.

12           THE COURT: Well, the reason it's been around that  
13 long is, because I've had this motion for reconsideration  
14 pending nearly that long, and, frankly, I have been -- it's  
15 just a very difficult case. It was a difficult case the first  
16 time through, and it hasn't gotten any easier on  
17 reconsideration, and that's the reality. So I have been trying  
18 to come to grips with the issues in a different format. All I  
19 can tell you is that I gave what I hope were final comments  
20 back to my law clerk. The problem -- and I'm hoping to get the  
21 opinion out by the end of the year.

22           Frankly, I don't think I'm going to make that because  
23 of mandatory leave issues that the federal government imposes  
24 on its staff, and my staff has been working very, very many  
25 overtime hours as a result of problems we had with the NARCO

1 opinion that were technical issues. Nothing to do with the  
2 opinion but the computer issues and then the Federal Mogul  
3 cases issues. And so I'm stuck with the fact that I have to  
4 give the leave issues. I can't do anything about it. And so  
5 I'm -- I just don't know whether it's going to happen, but it  
6 will be out shortly. And I'm telling you, folks, if you're  
7 going to resolve these issues, now is the time to do it,  
8 because shortly after the year end, if not before the year end,  
9 it's going to be too late.

10           So a word to the wise, I think settlement discussions  
11 may very well be something that all of you wish to engage in.  
12 And will I order them? I mean I can order settlement  
13 discussions. I don't know whether parties actually engage in  
14 settlement discussions if the Court orders them, because, you  
15 know, you can pay lip service to things. I will encourage them  
16 with every bone in my body. I am hereby encouraging you to  
17 engage in settlement discussions. I think you would be well  
18 served by coming to some resolution very promptly. That's the  
19 best I can tell you on this record.

20           MR. PARSONS: That will do just fine, Your Honor.  
21 Thank you very much.

22           THE COURT: In terms of a continuance, I think a  
23 continuance -- frankly, probably until February rather than  
24 January makes the most sense because of what I've just put on  
25 this record. I think if I put it off until January, I'll have

1 you back here. I hope that I will have the opinion out by  
2 then, but even if I do, you may still be in a position of  
3 having had what happened last January, which is you'll have  
4 just had an opinion. You may not have had a chance to digest  
5 it.

6 MR. PARSONS: We quite understand, and we understand  
7 Your Honor's constraints and the heavy caseload and the  
8 difficulty of the issues, so we'll take note, and I'll go back  
9 to Reaud Morgan and tell them to re-urge settlement  
10 discussions, and I hope counsel for Corning will do the same.

11 THE COURT: And, frankly, I think the PPG issues also  
12 ought to be put off until February rather than January for the  
13 same reasons.

14 MR. PARSONS: That's fine for us, Your Honor.

15 THE COURT: If -- PPG's counsel agree? Yes?

16 MR. MCGONIGLE: Yes.

17 THE COURT: All right. Mr. Ziegler, just put all  
18 three of those matters on to February. I really don't think  
19 there's much percentage in putting them in January.

20 MR. ZIEGLER: We'll do that, Your Honor.

21 THE COURT: All right. Thank you.

22 MR. PARSONS: Thank you, Your Honor.

23 MR. RESTIVO: I believe, Your Honor, that concludes  
24 the agenda.

25 THE COURT: Anybody have anything else?

1 (No verbal response)

2 THE COURT: Okay. Happy holidays, everyone. We're  
3 adjourned.

4 UNIDENTIFIED ATTORNEY: Happy holidays, Your Honor.

5 UNIDENTIFIED ATTORNEY: Happy holidays.

6 THE COURT: Nothing in NARCO and GIT. Correct?

7 MR. PARSONS: No.

8 THE COURT: I took care of those.

9 MR. PARSONS: No, Your Honor.

10 THE COURT: All right. Thank you.

11 \* \* \* \* \*

12 **CERTIFICATION**

13 I, PATRICIA C. REPKO, court approved transcriber,  
14 certify that the foregoing is a correct transcript from the  
15 official electronic sound recording of the proceedings in the  
16 above-entitled matter to the best of my ability.

17

18 /s/ Patricia C. Repko

Date: December 18, 2007

19 PATRICIA C. REPKO

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